

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

CHARLES RAY HICKS,  
Petitioner,

V.

JOHN E. WETZEL, Secretary,  
Pennsylvania Department of Corrections;  
ROBERT GILMORE, Superintendent of  
the State Correctional Institution at Greene;  
and MARK GARMAN, Superintendent of  
the State Correctional Institution at  
Rockview,  
Respondents.

No. 1:17-CV-1969

(Chief Judge Conner)

# THIS IS A CAPITAL CASE

**PETITIONER’S RESPONSE TO THE DEPARTMENT OF CORRECTIONS’ (DOC)  
MOTION TO STAY PROCEEDINGS**

Petitioner, Charles Ray Hicks, through counsel, respectfully submits his Response to the DOC's Motion to Stay Proceedings.

1. On July 20, 2018, this Court issued an Order directing Mr. Hicks to file his Habeas Petition on or before October 2, 2018. Doc. 8. As outlined in Doc. 32, beginning on August 29, 2018, when the DOC went into a lockdown and stopped processing all mail, and through and including this date, the DOC has implemented different, sometimes un-noticed policies that prevented counsel from providing documents to Mr. Hicks in a manner that preserved the attorney/client privilege and confidential communications. For these reasons, Mr. Hicks requested an Order

directing the DOC to allow counsel to provide confidential legal documents to Mr. Hicks in a manner that does not violate attorney/client privilege. Docs. 32, 33.

2. On February 13, 2019, the DOC filed its Motion to Stay Proceedings in light of the pending litigation regarding the DOC's treatment of legal mail in *Hayes/PILP v. Wetzel*, et al, No. 18-2100 (M.D. Pa. Jones, J.). Docs. 37, 38.

3. On February 22, 2019, the DOC issued a statement announcing "progress toward settlement of legal mail lawsuit" indicating:

"The department will implement an enhanced security screening procedure by April 6th that will allow inmates to receive original legal mail documents. The new procedure will protect institutional security concerns and safeguard the confidential delivery of privileged correspondence."

[https://www.media.pa.gov/Pages/corrections\\_details.aspx?newsid=384](https://www.media.pa.gov/Pages/corrections_details.aspx?newsid=384)

4. In light of these developments, counsel concur in the DOC's request for a stay in order to determine whether or not the DOC's new policies implemented on April 6 will sufficiently preserve the attorney/client privilege.

5. Counsel further request that this Court direct that counsel submit a status report on or before April 22, 2019 indicating the progress of the new DOC policy. A proposed order is attached.

WHEREFORE, for these reasons and in light of recent developments in *Hayes/PILP v. Wetzel*, counsel respectfully submits his concurrence to the DOC's Motion for a Stay and has provided a proposed order consistent with the above.

Respectfully submitted,

s/Kelly D. Miller

KELLY D. MILLER, ESQUIRE

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Dated: February 26, 2019

**CERTIFICATE OF SERVICE**

I, Kelly D. Miller, hereby certify that on this date I caused the foregoing document to be served on the following person at the location and in the manner indicated below, which satisfies the requirements of the Federal Rules of Civil Procedure:

**VIA FIRST-CLASS MAIL**

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Dated: February 26, 2019